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10 **UNITED STATES DISTRICT COURT**
11 **DISTRICT OF NEVADA**

12 UNITED STATES OF AMERICA, For the
13 Use and Benefit of SOURCE HELICOPTERS,
14 DIVISION OF ROGERS HELICOPTERS,
INC., a California corporation,

15 Plaintiff,

16 vs.

17 SAYERS CONSTRUCTION, LLC, a Texas
18 limited liability company PHILADELPHIA
19 INDEMNITY INSURANCE COMPANY, a
20 PENNSYLVANIA corporation; and DOES I-V
and ROE CORPORATIONS I-V,

21 Defendants.

Case No. **2:19-CV-01602-JCM-EJY**

USE-PLAINTIFF'S
ANSWER
TO
SAYERS CONSTRUCTION, LLC'S
AMENDED COUNTERCLAIM

22 Use-Plaintiff, Source Helicopters, Division of Rogers Helicopters, Inc. (herein after
23 "Use-Plaintiff," "Rogers Helicopters," or "Rogers"), by and through its attorneys, hereby
24 submits its Answer to Sayers Construction, LLC's ("Sayers"), Amended Counterclaim as
25 contained in the *Defendant and Counterclaim-Plaintiff Sayers Construction, LLC's Amended*
26

1 *Answer, Affirmative Defenses, and Amended Counterclaim* filed November 9, 2020 (ECF No.
2 51) and which was refiled on November 11, 2020 (ECF No. 53).

3 Unless expressly stated otherwise, Rogers denies each and every allegation in the
4 Amended Counterclaim, including any allegations in any unnumbered and numbered paragraphs,
5 titles, headings, subheadings, footnotes, exhibits, characterization of documents, and specifically
6 denies any liability to Sayers. To the extent not expressly denied, all allegations for which
7 Rogers denies possessing knowledge or information sufficient to form a belief are denied.
8 Rogers reserves the right to seek to amend and supplement its Answer as may be appropriate or
9 necessary.
10

11
12 **SUBJECT MATTER JURISDICTION**

13 1. In answering Paragraph 1 of Sayers' Amended Counterclaim, Rogers is without sufficient
14 knowledge or information necessary to form a belief as to the truth or falsity of such allegations
15 contained therein and accordingly, denies them.
16

17 **VENUE**

18 2. In answering Paragraph 2 of Sayers' Amended Counterclaim, Rogers is without sufficient
19 knowledge or information necessary to form a belief as to the truth or falsity of such allegations
20 contained therein and accordingly, denies them.
21

22 **PARTIES**

23 3. In answering Paragraph 3 of Sayers' Amended Counterclaim, Rogers admits Sayers is a
24 limited liability company organized and existing under the laws of the State of Texas, but is
25
26

1 without sufficient knowledge or information necessary to form a belief as to the truth or falsity of
2 the remainder of the allegations contained therein and accordingly, denies them.

3
4 4. In answering Paragraph 4 of Sayers' Amended Counterclaim, Rogers admits the
5 allegations therein.

6 **PERSONAL JURISDICTION**

7
8 5. In answering Paragraph 5 of Sayers' Amended Counterclaim, Rogers is without sufficient
9 knowledge or information necessary to form a belief as to the truth or falsity of such allegations
10 contained therein and accordingly, denies them.

11 **FACTUAL BACKGROUND**

12 6. In answering Paragraph 6 of Sayers' Amended Counterclaim, Rogers admits on or about
13 November 1, 2017, Rogers entered into a written contract (having a caption of "Agreement
14 Between Contractor and Subcontractor" which is hereinafter referred to as the "Subcontract")
15 with Sayers, under which Rogers agreed to perform certain work and provide certain labor,
16 equipment and materials required for the Project.

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19 7. In answering Paragraph 7 of Sayers' Amended Counterclaim, Rogers admits prior to
20 entering into the Subcontract it submitted a bid to Sayers for the work related to the Project. The
21 bid to Sayers specifically indicates that proposal does not include the price of the bond.
22 Paragraph 7 of Sayers' Amended Counterclaim refers to a document¹ that speaks for itself, and
23

24
25 _____
26 ¹ As used by Rogers in this Answer, "document" and/or "documents" include, without limitation,
27 writings, recordings, photographs, emails, and electronically stored information, as well as all
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1 Rogers denies any characterizations thereof. Rogers is otherwise without knowledge or
2 information sufficient to form a belief as to the truth of the remainder of the allegations without
3 reviewing the documents referenced in Paragraph 7; such allegations are, therefore, deemed to be
4 denied.
5

6 8. In answering Paragraph 8 of Sayers' Amended Counterclaim, the allegations therein refer
7 to documents that speak for themselves and Rogers denies any characterizations thereof. Rogers
8 is otherwise without knowledge or information sufficient to form a belief as to the truth of the
9 allegations without reviewing the documents referenced in Paragraph 8; such allegations are,
10 therefore, deemed to be denied.
11

12
13 9. In answering Paragraph 9 of Sayers' Amended Counterclaim, the allegations therein refer
14 to documents that speak for themselves and Rogers denies any characterizations thereof. Rogers
15 is otherwise without knowledge or information sufficient to form a belief as to the truth of the
16 allegations without reviewing the documents referenced in Paragraph 9; such allegations are,
17 therefore, deemed to be denied.
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21 10. In answering Paragraph 10 of Sayers' Amended Counterclaim, the allegations therein
22 refer to documents that speak for themselves and Rogers denies any characterizations thereof.
23 Rogers is otherwise without knowledge or information sufficient to form a belief as to the truth
24
25
26 other sources used in support of each allegation.
27

1 of the allegations without reviewing the document referenced in Paragraph 10; such allegations
2 are, therefore, deemed to be denied.
3

4 11. In answering Paragraph 11 of Sayers' Amended Counterclaim, Rogers denies the
5 allegations therein.
6

7 12. In answering Paragraph 12 of Sayers' Amended Counterclaim, the allegations therein
8 refer to documents that speak for themselves and Rogers denies any characterizations thereof.
9 Rogers is otherwise without knowledge or information sufficient to form a belief as to the truth
10 of the allegations without reviewing the document referenced in Paragraph 12; such allegations
11 are, therefore, deemed to be denied. In addition, on July 6, 2020, the Court ordered Sayers'
12 cause of action for fraud as to the alleged project delays are dismissed (see Order, ECF No. 48²),
14 thus these allegations in Paragraph 12 are contrary to the Court's ruling, irrelevant, and should be
15 stricken by the Court.
16

17
18 13. In answering Paragraph 13 of Sayers' Amended Counterclaim, the allegations therein
19 refer to documents that speak for themselves and Rogers denies any characterizations thereof.
20 Rogers is otherwise without knowledge or information sufficient to form a belief as to the truth
21 of the allegations without reviewing the document referenced in Paragraph 13; such allegations
22 are, therefore, deemed to be denied. In addition, on July 6, 2020, the Court ordered Sayers'
23 cause of action for fraud as to the alleged project delays are dismissed (see Order, ECF No. 48),
24

25 _____
26 ² See Magistrate Judge's Order (ECF No. 43) which was upheld via the District Court's Order (ECF No. 48).
27 _____

1 thus these allegations in Paragraph 13 are contrary to the Court's ruling, irrelevant, and should be
2 stricken by the Court.
3

4 14. In answering Paragraph 14 of Sayers' Amended Counterclaim, the allegations therein
5 refer to documents that speak for themselves and Rogers denies any characterizations thereof.
6 Rogers is otherwise without knowledge or information sufficient to form a belief as to the truth
7 of the allegations without reviewing the document referenced in Paragraph 14; such allegations
8 are, therefore, deemed to be denied.
9

10
11 15. In answering Paragraph 15 of Sayers' Amended Counterclaim, the allegations therein
12 refer to documents that speak for themselves and Rogers denies any characterizations thereof.
13 Rogers is otherwise without knowledge or information sufficient to form a belief as to the truth
14 of the allegations without reviewing the document referenced in Paragraph 15; such allegations
15 are, therefore, deemed to be denied.
16

17
18 16. In answering Paragraph 16 of Sayers' Amended Counterclaim, the allegations therein
19 refer to documents that speak for themselves and Rogers denies any characterizations thereof.
20 Rogers is otherwise without knowledge or information sufficient to form a belief as to the truth
21 of the allegations without reviewing the document referenced in Paragraph 16; such allegations
22 are, therefore, deemed to be denied.
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1 17. In answering Paragraph 17 of Sayers' Amended Counterclaim, Rogers denies making any
2 misrepresentations to Sayers and denies that the schedule had any impact on whether Sayers
3 would have entered into a contract with Rogers. Rogers further alleges that safety was WAPA's
4 primary focus with completing the scope of work for the Project. Operating a helicopter to
5 replace and install spacers is very dangerous and must be performed utilizing the strictest safety
6 protocols. Thus any weather condition, such as wind, rain, fog, or other inclement weather
7 resulting in the grounding of the helicopter.
8

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10
11 18. In answering Paragraph 18 of Sayers' Amended Counterclaim, the allegations therein
12 refer to documents that speaks for themselves and Rogers denies any characterizations thereof.
13 Sayers acknowledged and agreed to modify the baseline schedule and the commencement date
14 and the completion date were modified. Rogers is otherwise without knowledge or information
15 sufficient to form a belief as to the truth of the other allegations in Paragraph 18; such allegations
16 are, therefore, deemed to be denied.
17

18
19 19. Rogers denies that it had underbid the work. Sayers' allegations concerning the bond in
20 this paragraph are without merit and, therefore, denied as Sayers accepted a deductive change
21 order in the amount of \$98,000 for the bond. Rogers denies that the Project was not completed
22 on time as Sayers acknowledged and agreed to modify the baseline schedule, including
23 modifying the commencement date and the completion date. In addition, the project schedule
24 was mutually modified due to weather conditions, such as wind, rain, fog, or other inclement
25 weather resulting in the grounding of helicopters. In addition, the FAA also regulates when
26

1 helicopters can fly and the procedures that can be utilized for long-line operations utilizing a
2 helicopter. During the summer of 2018, the FAA implemented a nationwide grounding of the
3 hook utilized by the helicopters. Therefore, based on the foregoing, Rogers denies the allegations
4 in paragraph 19.
5

6
7 20. In answering Paragraph 20 of Sayers' Amended Counterclaim, Rogers denies the
8 allegations therein.
9

10 **COUNT I**
11 **(Common-Law Fraud/Fraudulent Inducement)**

12 21. In answering Paragraph 21 of Sayers' Amended Counterclaim, Rogers repeats, realleges
13 and incorporates its answer to Paragraphs 1 through 20 of Sayers' Amended Counterclaim as
14 though fully set forth herein.
15

16 22. In answering Paragraph 22 of Sayers' Amended Counterclaim, Rogers denies the
17 allegations in the first sentence of Paragraph 22. The remainder of allegations of Paragraph 22
18 of Sayers' Amended Counterclaim refer to a document that speaks for itself, and Rogers denies
19 any characterizations thereof. Rogers is otherwise without knowledge or information sufficient to
20 form a belief as to the truth of the remainder of the allegations in Paragraph 22; such allegations
21 are, therefore, deemed to be denied.
22
23

24 23. In answering Paragraph 23 of Sayers' Amended Counterclaim, the allegations therein
25 refer to documents that speaks for themselves and Rogers denies any characterizations thereof.
26

1 Rogers is otherwise without knowledge or information sufficient to form a belief as to the truth
2 of the allegations in Paragraph 23; such allegations are, therefore, deemed to be denied.
3

4 24. In answering Paragraph 24 of Sayers' Amended Counterclaim, the allegations therein
5 refer to documents that speaks for themselves and Rogers denies any characterizations thereof.
6 Rogers is otherwise without knowledge or information sufficient to form a belief as to the truth
7 of the allegations in Paragraph 24; such allegations are, therefore, deemed to be denied.
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10 25. In answering Paragraph 25 of Sayers' Amended Counterclaim, Rogers denies the
11 allegations therein.
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14 26. In answering Paragraph 26 of Sayers' Amended Counterclaim, Rogers denies the
15 allegations therein.
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18 27. In answering Paragraph 27 of Sayers' Amended Counterclaim, Rogers denies the
19 allegations therein.
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21 28. In answering Paragraph 28 of Sayers' Amended Counterclaim, Rogers denies the
22 allegations therein.
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1 29. In answering Paragraph 29 of Sayers' Amended Counterclaim, Rogers denies the
2 allegations therein.

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5 30. In answering Paragraph 30 of Sayers' Amended Counterclaim, Rogers denies the
6 allegations therein.

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8 31. In answering Paragraph 31 of Sayers' Amended Counterclaim, Rogers denies the
9 allegations therein.

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12 32. In answering Paragraph 32 of Sayers' Amended Counterclaim, Rogers denies the
13 allegations therein.

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15 33. In answering Paragraph 33 of Sayers' Amended Counterclaim, Rogers denies the
16 allegations therein.

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19 **COUNT II**
20 **(Statutory Fraud Pursuant to Section 27.01 of the Texas Business and Commerce Code)**

21 34. In answering Paragraph 34 of Sayers' Amended Counterclaim, Rogers repeats, realleges
22 and incorporates its answer to Paragraphs 1 through 33 of Sayers' Amended Counterclaim as
23 though fully set forth herein.

1 35. In answering Paragraph 35 of Sayers' Amended Counterclaim, Rogers is without
2 sufficient knowledge or information necessary to form a belief as to the truth or falsity of such
3 allegations contained therein and accordingly, denies them.
4

5
6 36. In answering Paragraph 36 of Sayers' Amended Counterclaim, the allegations therein
7 refer to documents that speaks for themselves and Rogers denies any characterizations thereof.
8 Rogers is otherwise without knowledge or information sufficient to form a belief as to the truth
9 of the allegations in Paragraph 36; such allegations are, therefore, deemed to be denied.
10

11
12 37. In answering Paragraph 37 of Sayers' Amended Counterclaim, the allegations therein
13 refer to documents that speaks for themselves and Rogers denies any characterizations thereof.
14 Rogers is otherwise without knowledge or information sufficient to form a belief as to the truth
15 of the allegations in Paragraph 37; such allegations are, therefore, deemed to be denied.
16

17
18 38. In answering Paragraph 38 of Sayers' Amended Counterclaim, the allegations therein
19 refer to documents that speaks for themselves and Rogers denies any characterizations thereof.
20 Rogers is otherwise without knowledge or information sufficient to form a belief as to the truth
21 of the allegations in Paragraph 38; such allegations are, therefore, deemed to be denied.
22

23 39. In answering Paragraph 39 of Sayers' Amended Counterclaim, the allegations therein
24 refer to documents that speaks for themselves and Rogers denies any characterizations thereof.
25
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1 Rogers is otherwise without knowledge or information sufficient to form a belief as to the truth
2 of the allegations in Paragraph 39; such allegations are, therefore, deemed to be denied.
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4 40. In answering Paragraph 40 of Sayers' Amended Counterclaim, Rogers denies the
5 allegations therein.
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8 41. In answering Paragraph 41 of Sayers' Amended Counterclaim, Rogers denies the
9 allegations therein.
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11 42. In answering Paragraph 42 of Sayers' Amended Counterclaim, Rogers denies the
12 allegations therein.
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15 43. In answering Paragraph 43 of Sayers' Amended Counterclaim, Rogers denies the
16 allegations therein.
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18 44. In answering Paragraph 44 of Sayers' Amended Counterclaim, Rogers denies the
19 allegations therein.
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22 45. In answering Paragraph 45 of Sayers' Amended Counterclaim, Rogers denies the
23 allegations therein.
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1 46. In answering Paragraph 46 of Sayers' Amended Counterclaim, Rogers denies the
2 allegations therein.
3

4 47. In answering Paragraph 47 of Sayers' Amended Counterclaim, Rogers denies the
5 allegations therein.
6

7
8 48. In answering Paragraph 48 of Sayers' Amended Counterclaim, Rogers denies the
9 allegations therein.
10

11 **COUNT III**
12 **(Breach of Contract)**

13 49. In answering Paragraph 49 of Sayers' Amended Counterclaim, Rogers repeats, realleges
14 and incorporates its answer to Paragraphs 1 through 48 of Sayers' Amended Counterclaim as
15 though fully set forth herein.
16

17 50. In answering Paragraph 50 of Sayers' Amended Counterclaim, to the extent the
18 "Agreement" referenced therein is in reference to the written contract (having a caption of
19 "Agreement Between Contractor and Subcontractor" which is hereinafter referred to as the
20 "Subcontract") Rogers entered into with Sayers on or about November 1, 2017, under which
21 Rogers agreed to perform certain work and provide certain labor, equipment and materials
22 required for the Project under the Prime Contract, Rogers admits same is valid and enforceable.
23
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1 51. In answering Paragraph 51 of Sayers' Amended Counterclaim, Rogers is without
2 sufficient knowledge or information necessary to form a belief as to the truth or falsity of such
3 allegations contained therein and accordingly, denies them.
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5
6 52. In answering Paragraph 52 of Sayers' Amended Counterclaim, Rogers is without
7 sufficient knowledge or information necessary to form a belief as to the truth or falsity of such
8 allegations contained therein and accordingly, denies them.
9

10 53. In answering Paragraph 53 of Sayers' Amended Counterclaim, Rogers denies the
11 allegations therein.
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14 54. In answering Paragraph 54 of Sayers' Amended Counterclaim, Rogers denies the
15 allegations therein.
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17 55. In answering Paragraph 55 of Sayers' Amended Counterclaim, Rogers denies the
18 allegations therein.
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AFFIRMATIVE DEFENSES

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2 1. The Amended Counterclaim, and each allegation therein, fails to state a claim upon
3 which relief can be granted.

4
5 2. The Amended Counterclaim is barred by the principles of waiver and/or estoppel.

6 3. The Amended Counterclaim, and each allegation of fraud and misrepresentation therein,
7 fails to aver the circumstances constituting fraud with particularity in accordance with Federal
8 Rule of Civil Procedure 9(b), and all such allegations should accordingly be dismissed.

9
10 4. The Amended Counterclaim, and each allegation of fraud and misrepresentation therein,
11 fails because each such allegation is based on statements relating to future contractual promises,
12 and not on statements relating to a past or existing fact.

13 5. The Amended Counterclaim, and each allegation of fraud and misrepresentation therein,
14 fails insofar as it relies on parol evidence not incorporated into the controlling written agreement.

15 6. Any recovery by Sayers is barred by its own improper conduct or “unclean hands,”
16 including conduct that caused or contributed to the damages Sayers alleges.

17
18 7. Sayers’ right to recovery, if any, must be offset by its failure to reasonably mitigate its
19 alleged losses.

20 8. Sayers’ right to recovery, if any, is precluded and subject to Subcontract provisions,
21 including the waiver of consequential damages provision of the Subcontract found at paragraph
22 10.1.
23

1 9. The imposition of punitive or exemplary damages in this case would violate Rogers'
2 rights to substantive and procedural due process under the Fifth and Fourteenth Amendments to
3 the Constitution of the United States and would violate the public policy and law of the State of
4 Texas and/or Nevada.

5
6 10. The imposition of punitive or exemplary damages in this case in the absence of the
7 procedural safeguards accorded to defendants subject to punishment in criminal proceedings,
8 including a reasonable doubt standard of proof, would violate the Fourth, Fifth, and Sixth
9 Amendments and Due Process Clauses of the Fifth and Fourteenth Amendments to the United
10 States Constitution.

11
12 11. The Amended Counterclaim fails to set forth facts sufficient to constitute a claim for
13 punitive damages or exemplary damages in that neither Rogers nor its agents, if any, acted with
14 malice, fraud, oppression, or any other state sufficient to sustain punitive or exemplary damages
15 with respect to Sayers.

16
17 12. Rogers reserves the right to assert any and all additional affirmative defenses that
18 discovery or other evidence may reveal to be appropriate. Rogers further reserves the right to
19 amend its Answer or otherwise plead in response to Sayers' Amended Counterclaim, and to file
20 such other Motions as it may deem advisable in defense of the Amended Counterclaim or as
21 warranted by information adduced through the discovery process.

22
23
24 WHEREFORE, having answered Sayers' Amended Counterclaim (ECF Nos. 51 and 53)
25 and set forth its affirmative defenses thereto, Rogers respectfully requests that this Court:
26

1. Order that Sayers take nothing by its Amended Counterclaim;
2. Dismiss the Amended Counterclaim with prejudice;
3. Award Rogers its reasonable costs and attorneys' fees; and
4. Grant such other and further relief as the Court deems appropriate.

Respectfully submitted this 23 day of November, 2020

CLARK HILL PLLC

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Attorneys for Use-Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 23rd day of November, 2020, I served the foregoing **USE-PLAINTIFF'S ANSWER TO SAYERS CONSTRUCTION, LLC'S AMENDED COUNTERCLAIM** as follows:

— by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada; and/or

X via electronic service by operation of the Court's electronic filing system, upon each party in this case who is registered as an electronic case filing user with the Clerk, including the following:

— by electronic service (i.e., email) per agreement between the attorneys for the parties to the email addresses below:

Kurt C. Faux, Esq. Willi H. Siepmann, Esq. Jordan F. Faux, Esq. The Faux Law Group 2625 North Green Valley Parkway, #100 Henderson, Nevada 89014 (Attorneys for Philadelphia Indemnity Insurance Company) Email: kfaux@fauxlaw.com Email: wsiepmann@fauxlaw.com Email: jfaux@fauxlaw.com	Maeghan Whitehead, Esq. Casey Griffith, Esq. Michael Barbee, Esq. Griffith Barbee PLLC 1722 Routh St., Ste. 710 Dallas, Texas 75201 (Attorneys for Sayers Construction, LLC) Email: maeghan.whitehead@griffithbarbee.com Email: casey.griffith@griffithbarbee.com Email: michael.barbee@griffithbarbee.com
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By /s/ Phyllis L. Cameron
Employee of Clark Hill, PLLC

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